

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION,)	
)	
Petitioner,)	
)	
v.)	No. 13-1354 RE
)	
ONE 36 REALTY LLC)	
and)	
JAY L. RUCKMAN,)	
)	
Respondents.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

On or about January 7, 2014, the Administrative Hearing Commission entered its Default Decision in the case of *Missouri Real Estate Commission v. One 36 Realty LLC and Jay L. Ruckman*, No. 13-1354 RE. In that Default Decision, the Administrative Hearing Commission found that Respondents Jay L. Ruckman's real estate broker associate license (license no. 2002018914) and One 36 Realty LLC's real estate association license (license no. 2006011295) are subject to disciplinary action by the Commission pursuant to § 339.100.2 (1), (14), (15), (16) and (19) RSMo.¹

The Missouri Real Estate Commission ("MREC") has received and reviewed the record of the proceedings before the Administrative Hearing Commission including the properly pled complaint and the Default Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the MREC held a hearing on April 2, 2014, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson

¹All Statutory References are to the Revised Statutes of Missouri, 2000, as amended, unless otherwise indicated.

City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondents' licenses. All of the members of the MREC were present throughout the meeting. Charles Davis participated through conference call. Further, each member of the MREC that was present for the hearing has read the Default Decision of the Administrative Hearing Commission. The MREC was represented by Assistant Attorney General Ron Dreisilker. Respondents having received proper notice and opportunity to appear did not appear in person or through legal counsel. After being present and considering all of the evidence presented during the hearing, the MREC issues these following Findings of Facts, Conclusions of Law and Order.

Based upon the foregoing the MREC hereby states:

I.

FINDINGS OF FACT

1. The MREC is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker associate or salesperson in this state. The MREC has control and supervision of the licensed occupations and enforcement of the terms and provisions of §§ 339.010-339.205 and 339.710-339.855, RSMo.

2. The MREC hereby adopts and incorporates by reference the findings of fact of the Default Decision, the Complaint upon which it was based and record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. One 36 Realty LLC and Jay L. Ruckman*, No. 13-1354 RE in its entirety and takes official notice thereof and hereby enters its findings of fact consistent therewith.

3. The MREC set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondents in a proper and timely fashion.

4. The MREC issued Jay L. Ruckman's real estate broker associate license 2002018914 and One 36 Realty LLC's real estate association license 2006011295. Respondents' licenses were not current at all times relevant to this proceeding. Ruckman's real estate broker associate license expired on June 30, 2012 due to failure to renew. One 36 Realty LLC's real estate association license expired on June 30, 2012 due to failure to renew.

II.

CONCLUSIONS OF LAW

5. This MREC has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The MREC expressly adopts and incorporates by reference the Default Decision with the Complaint upon which the Default Decision was based, issued by the Administrative Hearing Commission dated January 7, 2014, in *Missouri Real Estate Commission v. One 36 Realty LLC and Jay L. Ruckman*, No. 13-1354 RE, takes official notice thereof, and hereby enters its conclusions of law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Default Decision dated January 7, 2014, Respondents' real estate licenses are subject to disciplinary action by the MREC pursuant to § 339.100.2 (1), (14), (15), (16), and (19), RSMo.

8. The MREC has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Having fully considered all the evidence before the MREC, and giving full weight to the Default Decision of the Administrative Hearing Commission, it is the **ORDER** of the MREC that Jay L. Ruckman's real estate broker associate license (license no. 2002018914) and One 36 Realty LLC's real estate association license (license no. 2006011295) are hereby **REVOKED**. All evidence of Respondents' licensure shall be returned to the MREC within 30 days of this Order along with a Closing of a Real Estate Brokerage/Sole Proprietorship form.

The MREC will maintain this Order as an open, public record of the MREC as provided in Chapters 339, 610, and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 9th DAY OF April, 2014.

MISSOURI REAL ESTATE COMMISSION



Janet Carder, Executive Director

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE
COMMISSION,

Petitioner,

vs.

ONE 36 REALTY, LLC, and
JAY L. RUCKMAN,

Respondents.

No. 13-1354 RE

DEFAULT DECISION

On July 29, 2013, Petitioner Missouri Real Estate Commission filed a properly pled complaint seeking to discipline Respondents One 36 Realty, LLC, and Jay L. Ruckman. One 36 Realty was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail before September 3, 2013.¹ Mr. Ruckman was personally served on December 2, 2013.

More than thirty days have elapsed since Respondents were served. Respondents have not filed an answer or otherwise responded to the complaint.

In accordance with § 621.100.2, RSMo (Supp. 2012), we enter a default decision against Respondents establishing that Petitioner is entitled to the relief requested in the complaint. This default decision shall become final and may not be set aside unless a motion is filed with this Commission within thirty days of the date of this order establishing good cause for not responding to the complaint and stating facts constituting a meritorious defense.

SO ORDERED on January 7, 2014.


ALANA M. BADRAGAN-SCOTT
Commissioner

¹ There is no date of delivery on the certified receipt, but it was filed with this Commission on September 3, 2013.

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

JUL 29 2013

ADMINISTRATIVE HEARING
COMMISSION

MISSOURI REAL ESTATE COMMISSION)
3605 Missouri Blvd.)
P.O. Box 1339)
Jefferson City, Missouri 65102-1339,)

Petitioner,)

v.)

No. 13-1354 RE

ONE 36 REALTY, LLC)
702 E. Hwy 136)
Albany, Missouri 64402,)

Serve on: Patricia A. Crooks)
5608 North Antioch Rd.)
Gladstone, Missouri 64119)

and)

JAY L. RUCKMAN,)
401 E. Clay St.)
Albany, Missouri 64402,)

Respondents.)

COMPLAINT

Petitioner, the Missouri Real Estate Commission ("MREC"), by and through the undersigned counsel, and for its cause of action against Respondents One 36 Realty, LLC and Jay L. Ruckman states:

Allegations Common to All Counts

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo,¹ for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo (as amended), relating to real estate salespersons and brokers.
2. Jay L. Ruckman ("Ruckman") held a real estate broker associate license, license no. 2002018914. At all times relevant herein, Ruckman's license was current and active until on or about June 30, 2012 when the license expired.
3. One 36 Realty, LLC ("One 36") is a Missouri limited liability company, charter no. LC0606397.
4. One 36 was licensed with the MREC as a real estate association, license no. 2006011295. At all times relevant herein, One 36's license was current and active until on or about June 30, 2012 when the license expired.
5. At all times relevant herein, Ruckman was the designated broker of One 36, and, as such, Ruckman bears responsibility for his own conduct as well as that of One 36.
6. Ruckman's real estate license is culpable for the conduct and violations revealed by the MREC's audits of One 36.

¹All statutory citations are to the Revised Statutes of Missouri 2000, unless otherwise noted.

7. References herein to Ruckman are also references to One 36.
8. References herein to One 36 are also references to Ruckman.
9. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and 339.100.2, RSMo Supp. 2012.

10. Section 339.100.2, RSMo Supp. 2012, provides:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

(14) Placing a sign on or advertising any property offering it for sale or rent without the written consent of the owner or his or her duly authorized agent;

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

11. Section 339.105.5, RSMo Supp. 2012, provides:

5. A broker shall not be entitled to any money or other money paid to him or her in connection with any real estate sales transaction as part or all of his or her commission or fee until the transaction has been consummated or terminated, unless agreed in writing by all parties to the transaction.

12. Section 339.710(12), RSMo Supp. 2012, defines the term "designated broker" and provides:

(12) "Designated broker", any individual licensed as a broker who is operating pursuant to the definition of real estate broker as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, limited partnership, association, limited liability corporation, professional corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, limited partnership, association, limited liability company, professional corporation or corporation. Every real estate broker partnership, limited partnership, association, limited liability company, professional corporation or corporation shall appoint a designated broker[.]

13. State Regulation 20 CSR 2250-8.020(1) provides:

Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339.710.8, RSMo of all licensed and unlicensed persons

associated with them, whether in an individual capacity or through a corporate entity, association or partnership...

14. State Regulation 20 CSR 2250-8.120(7) provides:

(7) The designated broker and the branch office manager shall be responsible for the maintenance of the escrow account and shall ensure the brokerage's compliance with the statutes and rules related to the brokerage escrow account(s).

Count I—The First Audit

15. The MREC realleges and incorporates by reference paragraphs 1 through 14 as though fully set forth herein.

16. On or about August 3, 2010, the MREC conducted an audit of the real estate activity performed by One 36 and Ruckman. The audit examined One 36's business records and escrow accounts for the period of August 2009 until August 2010.

17. The MREC's audit revealed that One 36 and Ruckman advertised an expired listing on two occasions on the website www.showmemorerealestate.com. Those occasions were:

a. A listing for the property located at 606 E. Hwy 136, Albany, MO 64402. The listing agreement was active from on or about March 10, 2009 until March 10, 2010. As of August 2, 2010, the property was still listed on the website.

b. A listing for the property located at 405 N. Polk, Albany, MO 64402. The listing agreement was active from on or about September 11, 2008 until September 11, 2009. As of August 2, 2010, the property was still listed on the website.

18. Because One 36 and Ruckman advertised expired listings, they violated 20 CSR 2250-8.090(1), which states:

A licensee shall not advertise or place a sign upon any property offering it for sale or lease to prospective customers without the written consent of the owner or his or her duly authorized agent.

19. Because they advertised expired listings in violation of 20 CSR 2250-8.090(1), there is cause to discipline One 36's and Ruckman's licenses pursuant to § 339.100.2(14) and (15), RSMo Supp. 2012, which is set forth above.

20. On six occasions, One 36 and Ruckman removed commissions from the sales escrow account One 36 maintained, account no. xxxxxxxx14, Great Western Bank, before the transaction closed, consummated, and/or terminated. One 36 and Ruckman did not have written authorization from all parties involved to remove any commissions before the closing. Those occasions are:

a. One 36 wrote five commission checks, check nos. 1038, 1039, 1040, 1047, and 1048, totaling \$4,950 and removed that amount in commission from the sale of a property owned by Albany Homes, LLC prior to the closing date of June 9, 2010; and

b. One 36 and Ruckman wrote one check, check no. 1032, totaling \$1,000 and removed that amount in commission from the sale of the 405 N. Polk St., Albany, Missouri 64402 property prior to the closing date of September 24, 2009.

21. Because One 36 and Ruckman removed commission before the transaction closed without prior written authorization, they violated § 339.105.5, RSMo Supp. 2012, which is set forth above, and 20 CSR 2250-8.120(4), which provides:

Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds, and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo. Commissions payable must be removed from the escrow account at the time the transaction is completed. After the transaction is completed, interest payable shall be disbursed to the appropriate party(ies) from the escrow account no later than ten (10) banking days following the receipt of the next statement of the escrow account. When the licensee receives all interest earned, interest payable to a licensee must be removed from the escrow account within ten (10) banking days following the receipt of the next statement of the escrow account.

22. On three occasions, One 36 wrote three checks, check nos. 1038, 1040, and 1047 from the sales escrow account to Susan Ruckman, who was not licensed as a real estate agent and was not owed commission.

23. Because commissions were paid to someone other than the licensee owed a commission or the firm's general operating account, One 36 and Ruckman violated 20 CSR 2250-8.120(6), which provides:

Each check written on an escrow account or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related real estate transaction(s). Each check written on an escrow account for commission shall be made payable to the licensee to whom the commission is owed or to the firm's general operating account.

24. On three occasions, One 36 and Ruckman failed to deposit funds received in a timely manner. Those occasions are:

a. On August 12, 2009, a written contract was formed for the sale of the 405 N. Polk St., Albany, Missouri 64402 property and earnest money was received, but Ruckman did not deposit the earnest money received for this contract until September 17, 2009, which is well later than the ten banking days allowed by 20 CSR 2250-8.120(1);

b. On December 1, 2009, a written contract was formed for the sale of approximately eighty acres located at Township 64 N, Range 30W, Section 10, in Albany, Missouri 64402 and earnest money was

received, but Ruckman did not deposit the earnest money received for this contract until December 16, 2009, which is later than the ten banking days allowed by 20 CSR 2250-8.120(1);

c. On September 1, 2009, a written contract was formed for the sale of property located at 606 E. Hwy 136, Albany, Missouri 64402 and earnest money was received, but Ruckman did not deposit the earnest money received for this contract until September 17, 2009, which is later than the ten banking days allowed by 20 CSR 2250-8.120(1);

25. Because they failed to deposit funds in a timely manner, One 36 and Ruckman violated 20 CSR 2250-8.120(1), which provides:

All money received by the licensee as set out in section 339.100.2(1), RSMo shall be deposited in the escrow or trust account maintained by the broker no later than ten (10) banking days following the last date on which the signatures or initials, or both, of all the parties to the contract are obtained, unless otherwise provided in the contract. Earnest money received prior to acceptance of a written contract may be deposited into the escrow account by the broker with the written authorization of the party(ies) providing the funds.

26. Because they failed to deposit funds in a timely manner, cause exists to discipline One 36's and Ruckman's licenses pursuant to § 339.100.2(1), RSMo. Supp. 2012.

27. On one occasion, One 36 and Ruckman acted as a buyer's agent for the 1502 Bobwhite Circle, Unit 1, Albany, Missouri 64402 property without obtaining a written buyer's agency agreement, which is a violation of § 339.780.3, RSMo Supp. 2012:

Before or while engaging in any acts enumerated in section 339.010, except ministerial acts defined in section 339.710, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation.

28. One 36's and Ruckman's violations, as described within this Count, of Missouri Law and Missouri Regulations, to wit: §§ 339.105.5 and 339.780.3, RSMo Supp. 2012 and 20 CSR 2250-8.090(1), 20 CSR 2250-8.120(1), 20 CSR 2250-8.120(4), and 20 CSR 2250-8.120(6), provide cause to discipline One 36's and Ruckman's licenses under § 339.100.2(15) RSMo Supp. 2012, which is set forth above.

29. Within this Count, cause exists to discipline One 36's and Ruckman's licenses pursuant to § 339.100.2(1), (14), (15), and (19), RSMo Supp. 2012, which is set forth above.

Count II—The Second Audit

30. The MREC realleges and incorporates by reference paragraphs 1 through 29 as though fully set forth herein.

31. On or about April 24, 2012, the MREC conducted a second audit of the real estate activity performed by One 36 and Ruckman. The audit examined One 36's business records and escrow accounts for the period of April 2011 until April 2012.

32. The second audit revealed that on one occasion One 36 and Ruckman acted as a buyer's agent to obtain property located at 405 N. Polk St., Albany, Missouri 64402, although he did not enter into any written agreement with the buyer, in violation of § 339.780.3, RSMo Supp. 2012, which provides:

Before or while engaging in any acts enumerated in section 339.010, except ministerial acts defined in section 339.710, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation.

33. One 36's and Ruckman's violation, as described within this Count, of § 339.780.3 provides cause to discipline One 36's and Ruckman's licenses under § 339.100.2(15) RSMo Supp. 2012, which is set forth above.

Count III—Section 339.040.1, RSMo

34. The MREC realleges and incorporates by reference paragraphs 1 through 33 as though fully set forth herein.

35. Section 339.100.2(16), RSMo Supp. 2012, provides:

2. The commission may cause a complaint to be filed with the administrative hearing commission as

provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

36. Section 339.040, RSMo, provides, in pertinent part:

1. Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

37. The conduct of One 36 and Ruckman, individual and collectively, as alleged in each count of this Complaint, individually and collectively demonstrates that One 36 and Ruckman (1) lack good moral character; (2) do not bear a good reputation for honesty, integrity, and fair dealing; and/or (3) are not competent to transact the business of a broker or salesperson in such a manner

as to safeguard the interest of the public, which are grounds for the MREC to refuse to issue a license under § 339.040.1, RSMo, providing cause to discipline the real estate licenses of One 36 and Ruckman pursuant to § 339.100.2(16), RSMo.

Count IV—Section 339.100.2(19), RSMo

38. The MREC realleges and incorporates by reference paragraphs 1 through 37 as though fully set forth herein.

39. Section 339.100.2(19), RSMo Supp. 2012, provides:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

.

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

40. The conduct of One 36 and Ruckman, individually and collectively, as alleged in each count of this Complaint, individually and collectively, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith and/or incompetence, misconduct and/or gross

negligence, providing cause to discipline the real estate licenses of One 36 and Ruckman pursuant to § 339.100.2(19), RSMo. Supp. 2012.

WHEREFORE, Petitioner respectfully requests this Commission to conduct a hearing in this cause pursuant to Chapter 621, RSMo, and thereafter to issue its findings of fact and conclusions of law determining that Petitioner may take disciplinary action against the real estate licenses of One 36 and Ruckman for violations of Chapter 339, RSMo, and the regulations promulgated thereunder, and for such other and further relief this Commission deems just and proper.

Respectfully submitted,

CHRIS KOSTER
Attorney General



Ron Dreisilker
Missouri Bar No. 64825
Assistant Attorney General

P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-7728
Telefax: 573-751-5660
E-mail: Ron.Dreisilker@ago.mo.gov

Attorneys for Petitioner